



4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

**[SATS No. VA-127-FOR; Docket ID: OSM-2015-0003;
S1D1S SS08011000 SX064A000 167S180110;
S2D2S SS08011000 SX064A000 16XS501520]**

Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE), is announcing receipt of a proposed amendment to the Virginia regulatory program (the Virginia program) under the Surface Mining Control and Reclamation Act of 1977

(SMCRA or the Act). Through this proposed amendment, the State seeks to revise the Virginia Coal Surface Mining Reclamation Regulations (the State regulations) in light of legislative changes made by the General Assembly of Virginia. If approved, the proposed amendment would incorporate these legislative changes into the approved State program. Additionally, the State regulations would be amended to revise the language of the public participation regulations to clarify proof of publication, remove the self-bonding instrument, and remove duplicate pool bond regulations already addressed under the Code of Virginia.

This document gives the times and locations that the Virginia program and this proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4:00 p.m., Eastern Standard Time (E.S.T.), [Insert date 30 days after the date of publication in the FEDERAL REGISTER]. If requested, we will hold a public hearing on the amendment on [Insert date 25 days after date of publication in the FEDERAL REGISTER]. We will accept requests to speak at a hearing until 4:00 p.m., E.S.T. on [Insert date 15 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by SATS No. VA-127-FOR, by

any of the following methods:

- Mail/Hand Delivery: Mr. Earl Bandy, Field Office Director, Knoxville Field Office, Office of Surface Mining Reclamation and Enforcement, 710 Locust Street, 2nd Floor, Knoxville, Tennessee 37902.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Comment Procedures” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Virginia program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSMRE’s Knoxville Field Office or the full text of the program amendment is available for you to read at www.regulations.gov.

Mr. Earl Bandy, Field Office Director
Knoxville Field Office

Office of Surface Mining Reclamation and Enforcement

710 Locust Street, 2nd Floor

Knoxville, Tennessee 37902

Telephone: (865) 545-4103 ext 186

E-mail: *ebandy@osmre.gov*

In addition, you may review a copy of the amendment during regular business hours at the following location:

Mr. Harve A. Mooney,

Legal Services Officer

Virginia Department of Mines, Minerals and Energy

3405 Mountain Empire Road

Big Stone Gap, Virginia 24219

Telephone: (276) 523-8271

E-mail: *harve.mooney@dmme.virginia.gov*

FOR FURTHER INFORMATION CONTACT: Mr. Earl Bandy, Field Office

Director, Knoxville Field Office. Telephone: (865) 545-4103 ext 186. E-mail:

ebandy@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Virginia Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

I. Background on the Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, “. . . State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act . . .; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.” *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Virginia program on December 15, 1981. You can find background information on the Virginia program, including the Secretary’s findings, the disposition of comments, and conditions of approval, in the December 15, 1981, Federal Register (46 FR 61088). You can also find later actions concerning the Virginia program and program amendments at 30 CFR 946.12, 946.13, and 946.15.

II. Description of the Proposed Amendment

By letter dated June 12, 2015 (Administrative Record No. VA 2024), the Virginia Department of Mines, Minerals and Energy (VADMME) sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*).

At the VADMME's request, an actuarial group performed an audit of the Virginia Coal Surface Mining Reclamation Fund (the Fund). In evaluation year 2013, the actuary group provided a final report (Administrative Record No. VA 2022) with recommendations to improve the financial soundness of the Fund. In an effort to improve the operation of the Fund, the General Assembly of Virginia enacted legislation to amend certain provisions of the Virginia Coal Surface Mining Control and Reclamation Act of 1979 (VASMCRRA). *See* 2014 Bill Text VA H.B. 710. In its submission, VADMME provided us with a copy of House Bill 710 (H.B. 710) enacted March 5, 2014 (Administrative Record No. VA 2021), amending the Code of Virginia at Va. Code Ann. §§ 45.1-241, 45.1-270.3, and 45.1-270.4. The enactment of H.B. 710 revised the coal tax structure to collect the tax for all time periods of operation, increased the Fund balance cap from \$2 million to \$20 million, and removed an applicant's ability to submit its own bond without separate surety, thereby removing the self-bonding option.

Accordingly, VADMME now seeks to amend its State program to reflect the VASMCRRA

changes made through H.B. 710. VADMME's proposed changes to its State regulations are grouped into three categories for the purpose of this proposed rule notice and summarized below.

1. Removal of Duplicative Pool Bond Requirements under Part 801 of the State Regulations

VADMME proposes to amend its State program by removing certain duplicate regulations for the pool bond because it states that these items are already addressed in the amended VASMCRA at Va. Code Ann. § 45.1-241.

VADMME proposes to remove, in whole, the State regulations at 4 VAC 25-130-801.11, 801.14, and 801.16, which address participation in the pool bond fund, the reclamation tax, and reinstatement to the pool bond fund.

The proposed amendment would amend 4 VAC 25-130-801.12 entitled "Entrance fee and bond" by removing a majority of the language in subsection (a), and would delete subsections (d) and (g) of this regulations. Additionally, VADMME's proposed amendment would remove subsection (c) of this regulation since it references self-bonding, which is no longer permitted by the State as addressed in a separate category below. Approval of these proposed modifications would result in the renumbering of the remaining subsections.

As VADMME seeks to remove section 801.14 of the State regulations, the proposed

revisions to 4 VAC 25-130-801.15, entitled “Collection of the reclamation tax and penalties for non-payment”, entail an amended reference to § 45.1-270.4 of the Code of Virginia within subsections (b) and (d). A minor revision is also proposed at subsection (a) to update the point of contact for the Fund tax reporting form.

2. Revisions to the Public Participation and Proof of Publication Language Referenced in the State Regulations

VADMME proposes to revise the public participation language referenced in 4 VAC 25-130-772.12, 778.21, and 800.40, to be consistent with the corresponding Federal regulations and to clarify proof of publication requirements.

The proposed amendment would revise the public notice language in subsection (c)(1) of 4 VAC 25-130-772.12, entitled “Permit requirements for exploration removing more than 250 tons of coal, or occurring on lands designated as unsuitable for surface coal mining operations” and the language in 4 VAC 25-130-778.21, entitled “Proof of publication” to be more consistent with the language provided in the Federal regulations at 30 CFR 772.12 and 778.21. The revised language would clarify that the required proof of publication shall be made a part of a subsequent submittal after the last date of publication prior to approval.

Additionally, the proposed amendment would revise the language in 4 VAC 25-130-800.40, entitled “Requirements to release performance bonds” referencing public notice

and proof of publication required for bond release applications. VADMME also proposes to create a new subsection by moving language from 4 VAC 25-130-800.40(a)(2), discussing the permittee's duty to submit copies of notices sent to those within the locality as part of the bond release application, into a new subsection (a)(3). The existing subsection (a)(3) would be renumbered to (a)(4).

3. Removal of the Self-Bonding and Escrow Bonding Options

In response to changes made to the Code of Virginia through the enactment of H.B. 710, VADMME proposes to remove the self-bonding instrument in an effort to improve the financial soundness of the Fund. As definitions associated with self-bonding procedures, VADMME also seeks to remove the definitions of "Self-bonding", "Cognovit note", and "Indemnity agreement" currently provided under 4 VAC 25-130-700.5. The corresponding Federal regulation for this section is 30 CFR 800.5.

Furthermore, VADMME proposes to remove the provision allowing for Escrow bonding, outlined at 4 VAC 25-130-800.23, to reflect changes in the bonding requirements in the Code of Virginia. This type of bonding, in addition to the self-bonding option, would no longer be allowed under the proposed amendment.

The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES** or at www.regulations.gov.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Electric or Written Comments

If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included and considered in the docket for this rulemaking.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., E.S.T. on [Insert date 15 days after date of publication in the FEDERAL REGISTER]. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled

to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866 - Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the Federal Register indicating receipt of

the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 13, 2015.

Thomas D. Shope, Regional Director

Appalachian Region

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